

The 12th May, 1986

No. 9/86-6Lab./3182.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Jitendra Castings and Engineering Works, Plot No. 205, Sector 24, Faridabad.

**IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD**

Reference No. 188 of 1984

between

SHRI RAJU KOMAL, WORKMAN AND THE RESPONDENT MANAGEMENT OF
M/S. JITENDRA CASTINGS AND ENGINEERING WORKS, PLOT NO. 205,
SECTOR 24, FARIDABAD

Present :

Shri Manohar Lal for the workman.

Shri H. S. Kaushik for the respondent-management.

AWARD

This industrial dispute between the workman Shri Raju Komal and the respondent-management of M/s Jitendra Castings and Engineering Works, Plot No. 205, Sector 24, Faridabad, has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/2/83-84/27130—35, dated 30th July, 1984 under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication. The terms of the reference are :—

Whether the termination of services of Shri Raju Komal was justified and in order ? If not, to what relief is he entitled ?

According to the demand notice, the workman was employed three years back. On 3rd March, 1983, he met with an accident. He was admitted to Sufdarjang Hospital and remained there upto 18th March, 1983. After that he was treated in the E.S.I. Hospital. He returned on 12th November, 1983 with the fitness certificate, but he was not taken back on duty. He continuously came in the factory upto 27th March, 1984 when he was finally refused to be taken back on duty. He has prayed for reinstatement with full back wages and continuity of service.

This reference has been contested by the management. Relationship of employer and employee has been denied. It is further alleged that he has not completed 240 days of service. It is alleged that the workman was employed by an independent contractor Shri Ram Dhari, who was working with the respondent. According to record of the contractor, he joined the service of the contractor on 9th January, 1983. He was not under the control and supervision of the respondent. He was paid by the contractor. The respondent deducted E.S.I. from the bills of the contractor and deposited them with the E.S.I. authorities. The workman received injury on 2nd March, 1983 and he was sent to E.S.I. Hospital. He was again referred to Sufdarjang Hospital. He received his full and final payment from the E.S.I. and never sent any medical etc.

The parties contested the reference on the following issues :—

1. Whether there is relationship of employer and employee existing between the parties ?
2. As per reference ?

I have heard the representatives of both the parties and gone through the evidence on record. My findings on the issues are as under :—

Issue No. 1 & 2.—Both the issues are inter-connected. Hence decided together. MW-1 has stated that the claimant was workman of the contractor Shri Ram Dhari. He was appointed on 9th January, 1983 for grinding on trial basis. He met with an accident on 2nd March, 1983. The management has spent Rs. 4,000 on his treatment. His pension has been fixed at Rs. 147 p.m. by the E.S.I. Authorities. He has also brought the register of the contractor. There is no evidence that Shri Ram Dhari was a registered contractor. The workman has stated in his statement as WW-1 that he was working within the factory premises. It is admitted by MW-1 that the workman was working on the grinding machine. He suffered an injury and he was sent to Sufdarjang Hospital and after that he was not taken on duty. WW-2 Shri

Jagdish Singh has stated that the workman was working for the last two years. Hence according to him the claimant was appointed in May, 1982. He has completed 240 days of service when his services were terminated. But there is no sufficient proof. It is therefore, very difficult to say whether the workman has completed 240 days of service at the time of his accident, but he was certainly employee of the respondent when he met with an accident. He was not taken back on duty. Section 25-F of the I.D. Act was not complied with. It cannot be said whether his services were illegally terminated as there is no sufficient proof that the workman had worked for more than 240 days in a year. But taking into consideration that the workman was employee of the respondent-management he has been disabled while working on the Grinding Machine. I award him Rs. 2,000 as compensation exercising my discretion under section 11-A of the Industrial Disputes Act, 1947. The workman is entitled to recover this amount from the management.

The award is given accordingly.

Dated the 12th February, 1986

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 850, dated 25th March, 1986.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chanidgarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

No. 9/8/86-6Lab./3273.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s. K. G. Khosla Compressors Ltd., Mathura Road, Faridabad:—

IN THE COURT OF SHRI R. N. SINGAL, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 297 of 1984

between

SHRI RAMESH GIRI, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S
K. G. KHOSLA COMPRESSORS LTD., MATHURA ROAD, FARIDABAD

Present:—

Shri Manohar Lal, for the workman.

Shri J. S. Saroha, for the respondent-management.

AWARD

This industrial dispute between the workman Shri Ramesh Giri and the respondent-management of M/s K. G. Khosla Compressors Ltd., Mathura Road, Faridabad has been referred to this Court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/124-84/30816—21, dated 16th August, 1984 under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication. The terms of the reference are:—

Whether the termination of services of Shri Ramesh Giri was justified and in order? If not, to what relief is he entitled?

According to the demand notice, the workman was employed about seven years back as Turner. He never gave any cause of complaint to the management. K. G. Khosla Workers Union cooperated with the management because its office bearers were sold in the hands of the management. At this the workers demanded the election of the union. But the office bearers refused to hold the election. Hence the workman formed a new union and the workman was elected Propaganda Secretary. To take revenge, the workman was suspended on 2nd February, 1984. A false chargesheet was issued on 14th February, 1984. This was replied on 16th February, 1984. Being not satisfied with the reply Shri V. K. Diwan was appointed as Enquiry Officer. He was man of the management. This enquiry was fixed in the management house, 14, Industrial Area, Lodhi Road, New Delhi. The workman gave a letter to hold the enquiry not at Delhi and to change the enquiry officer but it was not listened. The letters of the workman were not needed to. No information of enquiry was given to him. Without giving him any show-cause notice the workman was dismissed from service on 17th April, 1984. The dismissal is challenged as illegal and against the natural justice. This victimisation is due to trade union activities. The workman has prayed for reinstatement with continuity of service and with full back wages.

This claim has been contested by the management. It is admitted that the claimant was employed on 8th March, 1977. It is alleged that there was valid settlement arrived at with the management and authorised representative of the workers union. Complaints of major misconduct were received against the workman such as resorting to instigating and organising strike, stopping workmen from work, obstructing the movement of officers and threatening them, stopping machines, cutting of electric power lines raising filthy slogans and holding meetings in the shop floor etc. On this the workman was charge-sheeted by letter, dated 2nd February, 1984 and 6th February, 1984. His explanation was considered but was not found satisfactory. Hence Shri V.K. Diwan and outsider and independent person was appointed as enquiry officer. The workman raised several objections,—*vide* his letter, dated 24th February, 1984 and the same were disposed off by the management,—*vide* letter dated 25th February, 1984. The enquiry was fixed for 25th February, 1984 and it was adjourned to 28th February, 1984 due to absence of the workman. The notice of enquiry was received by the workman on 27th February, 1984; but he did not participate in the enquiry. Hence the workman was proceeded *ex parte*. He was offered all reasonable facilities. The situation in the factory was tense. It was deemed suitable to hold the enquiry at Delhi. The workman and his representative were offered to and to bus fair. It is contended that all these facts show that the enquiry was fair and proper. The enquiry officer found the workman guilty of the charges. There is no provision of *Ind Show-cause Notice*. The charges levelled against the workman are of serious nature. It was considered detrimental to retain the workman. Hence he was dismissed from service. Objection is further taken that the workman is gainfully employed. Hence it is prayed that no relief is to be given to the workman. In case the domestic enquiry is found to be defective it is prayed that management be given an opportunity to adduce evidence on merits.

The workman has filed his rejoinder. The averments raised in the written statement are denied. The reference was contested on the following issues :—

1. Whether the enquiry was fair and proper ?
2. Whether the workman is gainfully employed ?
3. As per reference ?

I have heard the representatives of both the parties and gone through the entire evidence placed record. My findings seriatim are as follows :—

Issue No. 1—The representative of the workman has contended that termination letter was not served upon the workman. Hence his termination is illegal. He has relied upon *Ritz Theatre versus its workman 1962-II-LLJ-498*. In the present case the dismissal order, dated 17th April, 1984 was sent to the workman on his address given in Exhibit M-7 on 21st April, 1985,—*vide* postal receipt No. 1458. It is therefore, clear that dismissal letter was duly served and the contention of the representative of the workman has no force. The next contention of the representative of the workman is that the charge-sheet, Exhibit M-8 is fake. It does not contain full particulars and proposed punishment has also not been mentioned. These contentions have no force. I have read the charge-sheet Exhibit M-8. It is not fake. The charges regarding the incident of 27th January, 1984, 21st January, 1984 and 1st February, 1984. These have been clearly mentioned in the charge-sheet. The representative of the workman has not been able to put his hand on any of his judgement in support of his contentions. It is further contended that list of witnesses has not been given in the charge-sheet. The representative of the workman has not been able to show if this is also fatal in the case of the management. The next contention of the representative of the workman is that no show-cause notice was given to the workman before passing the order of dismissal. It is further alleged that the findings of the enquiry officer must be accompanied with the show-cause notice. He has relied the judgement of State Bank of Mysore *versus* R. Shamanna 1985-I-LLJ page 297. In this case the rule provided of an opportunity of being heard on the question of sentence. Hence it was held that *Ind show-cause notice* is necessary. In the present case there is no such rule in the Standing Order of the respondent-management. It has been held by the Hon'ble Supreme Court in *S. S. Railway versus workers Union (S.C.)* page 513 that second show-cause notice is not required. Even article 311 of the Constitution of India has been amended that no show-cause notice is required to be given. Hence the contentions of the representative of the workman has no force.

The next contention of the representative of the workman is that the workman had gone to attend the enquiry proceedings on 28th February, 1984. When he reached the management house, Lodhi Road, Delhi Shri Nagar was found present there. 2/3 persons were also standing with him. He asked the workman to go away otherwise his hand and feet will be chocked off. He came back to Shri Batra on the same day. Shri Batra said that another letter would be given to him and advised him to appear before the enquiry officer on the date fixed. After that no date was given to him. This contention of the workman has not been corroborated by any evidence and no such contention has been taken in the claim statement or in the rejoinder. This is an after-thought story and has no legal force. The workman did not appear on 28th February, 1984 before the Enquiry Officer in spite of the fact that he was duly served for that date on 27th February, 1984. This notice is Ex. M-3 which has been admitted by the workman on 29th February, 1984.

The next contention of the workman is that he was not allowed to be represented by a person of his choice. He had requested the management to be represented through Shri R.D. Yadav, Legal Secretary and Shri Nagar Singh Advocate, office-bearers of Hind Mazdoor Sabha. Hence they were denied the opportunity to defend themselves. This contention of the workman has been contested the representative of the management. It is contended that under rule 21-A of the standing orders Ex. M-12, the workman had the right to be represented by a co-workman of his choice. The relevant portion reads as follows :—

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“During the course of such enquiry proceedings the workman shall have the right to get assistance of any co-worker of his own choice of this establishment. Duly signed copy of the proceedings of the enquiry will be made available to the workman ordinarily every day after such enquiry.”

There is no negative provision in the rules that the workman will not be allowed to be represented by a legal practitioner and legally trained mind. Hence the representative of the workman has contended that the workman should have been allowed to be represented by Shri R.D. Yadav and Shri Nagar Singh, Advocate. He has relied upon the judgement of Hon’ble Supreme Court in the Board of Trustee *versus* Dalip Kumar AIR-1983-Page 109. In the case cited above the workman was not allowed to be represented by a legal practitioner, whereas the management appointed two legal advisers as presenting officers. Under rule 12(a) the employee may take the assistance of any other employee or if the employee is class III or IV employee or an office-bearer as defined in clause (d) of Section 2 of the Trade Unions Act, 1926 of the Union to which he belongs to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority, having regard to the circumstances of the case, so permits. In view of the above discussion, it was held that the employer was represented by two legally trained minds. Hence the workman was denied fair opportunity to defend himself as he was not allowed to engage a legal practitioner. The following paragraph No. 11 of the above-said judgement is relevant to the facts of the present case :—

“We are faced with the situation where when the enquiry commenced, the rules neither provided for permitting the delinquent employee to be represented by an advocate nor en embargo was placed on such appearance. The rules were silent on this point. But the Chairman of the appellant while rejecting the request of the first respondent seeking permission to appear through a legal practitioner simultaneously appointed M/s. R. K. Shetty and A.B. Chaudhary, Legal Adviser and Junior Assistant Legal Adviser respectively in the employment of the appellant as presenting-cum-prosecuting officers. What does this signify? The normal inference is that according to the Chairman of the appellant the issues that would arise in the enquiry were such complex issues involving intricate legal propositions that the enquiry officer would need the assistance of Presenting-cum-Prosecuting Officers. And look at the array of law officers of the appellant appointed for this purpose. Now examine the approach of the Chairman. While he directed two of his law officers to conduct the enquiry as prosecutors, he simultaneously proceeds to deny such legal representation to the delinquent employee, when he declined the permission to the first respondent to appear through a legal practitioner. Does this disclose a fair image how the scales were weighted and thereby tilted in favour of the Prosecuting Officer. In this enquiry the employer would be represented by two legally trained minds, at the costs of port trust while the first respondent was asked either to defend for himself in person or have the assistance of another employee such as Nadkarni who is not shown to be a legally trained person but the delinquent employee cannot engage legal practitioner at his cost”.

It was further held that :—

“Apart from general propositions, in the facts of this case, this enquiry would be a one sided enquiry weighted against the delinquent officer and would result in denial of reasonable opportunity to defend himself.”.

The facts of the present case are different. In the case the management was represented by Shri M. Paul an officer of the respondent. He was not a legally trained person. Hence the management was also not represented by a legally trained person. Hence the workman could also not be allowed to be represented by a legal practitioner or a legally trained person. No rule or natural justice was flouted if the workman was not allowed to be represented by legally trained minds. It is further contended that the enquiry officer was an advocate. Hence the workman should be allowed to be represented by an advocate. He has been able to give citation in support of his contention, that if the enquiry officer is a legally trained person in this case the workman could be represented by a legally trained person. The certified standing order of the company has force of law. There is no provisions for allowing the workman to be represented by a legally trained person. The management was not represented by a legally trained person. Hence no injustice was done with the workman.

The second contention of the representative of the workman is that the place of enquiry was fixed at Management house, Lodhi Road, Delhi and the workman had written that there was danger to his life and enquiry be fixed in the factory premises at Faridabad. It is alleged that the respondent

factory is situated in Haryana near Delhi. The place of enquiry is about 10/15 K.M. from the factory and the management allowed to and fro bus fair to the workman and his representative and these facts are not disputed. Hence it cannot be said that the enquiry could not be held at management house, Lodhi Road, Delhi, when the situation in the factory was tense. There is no ground to believe that the apprehended danger to his life while going and coming to the place of enquiry, rather if the enquiry is held at place other than the factory it is a circumstance which is favourable to the workman. It has been held by the Hon'ble Supreme Court in judgement of Board of Trustees cited above that one has to consider the nature of enquiry, who held it, where it held what is the atmosphere? Domestic enquiry is claimed to be a managerial function. A man of the establishment done the role of a judge. It is held in the establishment since or a part of it. Can it even be compared to the adjudication by an impartial arbitrator or a court presided over by an unbiased judge? If the present case both the circumstances were favourable to the workman. The enquiry officer was not a man of the management, the enquiry was held in the place other than the factory. Hence the atmosphere was more favourable but the workman was adamant not to participate in the enquiry, which shows his hostile attitude and adamant behaviour. Had he attended the enquiry proceedings and faced difficulties he would have placed these before the enquiry officer and if these objections would not have been meted out by the enquiry officer, only then it could be said that the enquiry was not held in proper atmosphere and no opportunity was given to the workman. By absenting from the proceedings he showed that his behaviour was non-cooperative and defiant. In *Lakshman Shastri versus State of Bihar*; 1969-I-LJI-page 444, the enquiry was held in a school about 8 miles away from the spot. It was held that rules of natural justice do not require that the enquiry against a person should be held on the spot. In these circumstances, I find that by fixing the place of enquiry at Delhi it cannot be said that any prejudice was caused to the workman.

The next contention of the authorised representative of the workman is that an advocate was appointed an enquiry officer, it has prejudiced the workman. It has been held by the Supreme Court in *D.D. Cement versus Murari Lal*, 1971-LIC page 2; S.C. that merely because the enquiry officer was a junior advocate and that he had on occasions been engaged by the management he would not be necessarily biased against the workman. In the present case even there is no evidence that Shri V.K. Diwan has been engaged by the management on certain occasions. Hence the appointment of the enquiry officer could not be said to the circumstances un-favourable to the delinquent workman.

Next contention of the representative of the workman is that the workman has been victimised due to his union activities. It has been held by the Hon'ble Supreme Court in *Bharat Iron Works versus Bhaghu Bhai* and other 1976-LIC page 5 that the victimisation is a serious charge by employee against employer which must be properly and adequately pleaded giving all particulars. The fact that there is a union and legitimate trade union or active office bearer, is not sufficient to establish victimisation. In the present case, there is no evidence that the workman has been victimised due to his union activities. It is contended that the workman was proceeded against *ex parte* and the enquiry was concluded in a short time. It shows that he was victimised. It is admitted that the workman was duly informed of the date of enquiry. He did not appear. Hence he was rightly proceeded *ex parte*. It is held by the Hon'ble Supreme Court in *Brook Bond Company India Ltd., versus S. Subrahman*; 1961-II-LLJ page 417 that where the workman insist that they must be allowed to be represented by their counsel and on the refusal of the same they boycotted the enquiry. Such enquiry could be held *ex parte*. So in the present case the claimant boycotted the enquiry and he was rightly proceeded against *ex parte*. If the enquiry officer concluded the enquiry in short time it was an act of efficiency and it was not the case of victimisation. The representative of the workman has not assailed the enquiry report on merits which is based on a *ex parte* evidence recorded during the enquiry. In view of the above discussions I find that a fair and proper enquiry was conducted. It is contended that the workman has been victimised due to his union activities and hence the order of dismissal is illegal and un-justified. This contention of the authorised representative of the workman has no force. The workman did not participate in the enquiry. The enquiry was fair and proper.

Issue No. 2—There is no evidence of the management that the workman is gainfully employed. The witness of the management Shri R.C. Batra MW-2 has not stated a single word that the workman is gainfully employed. Hence this issue is decided against the management.

Issue No. 3—There were serious charges against the workman that he sabotaged machinery and electric connection, instigated other workmen to stop work and indulge in subversive activities in the factory premises. The representative of the workman has no dispute that the above facts if proved amount to gross misconduct. The workman had no right to stop other workmen from working. The workman had no right to sabotage machinery and electric connection. If such activities were allowed, industrial peace will be no more, and production will suffer and hence such activities can not be allowed in the factory premises. It has been held by the Hon'ble Supreme Court in *East India Hotels versus Their Workman*; 1974-LIC page 532 that when a domestic enquiry is proper, Tribunal has no jurisdiction to set aside the judgement or decision of the employer as an appellate body. Interference is justified only when the enquiry is not fair and proper and the management is guilty of unfair labour practice. It has been held in *D.D. Cement Ltd., versus Murari Lal* 1981-LIC page 2, that workman blowing whistle at the instance of the other workman leading to stoppage of work in the factory. Such act of indiscipline cannot be

tolerated by an employer. The representative of the workman has relied upon the judgement of Bombay High Court in *Bhiwa Y Mulam & Another versus Indabrator Limited and another*; 1985-I-LJJ-page 20. In this case the punishment inflicted on the workman was disproportionate to the mis-conduct proved. It was held that the Tribunal had rightly upset the order of dismissal. Compensation was awarded to the workman. It was held that it was not proper. The workman has lost the job which is an extreme punishment. Hence the workman was reinstated with fifty percent back wages from the date of suspension. "In the case cited above, the mis-conduct was not such serious as it is in the present case. In the present case, the mis-conduct of the workman is grave and it cannot be tolerated by the management. It amounted to act of sabotage leading to the stoppage of work in the factory and relief under Section 11-A of the Industrial Disputes Act as prayed cannot be granted to the workman in view of grievous mis-conduct. Hence he cannot be reinstated. I, therefore, give the award that the order of termination is legal and justified. He is not entitled to any relief.

Dated the 26th February, 1986.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

Endt. No. 865, dated the 31st March, 1986

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh, required under Section 15 of the I.D. Act.

R. N. SINGAL,
Presiding Officer,
Labour Court, Faridabad.

The 7th May, 1986

No. 97/86-6 Lab./3343.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Paral Ceramics Works, Najabgarh Road, Bahadurgarh (Rohtak).

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 97 of 85.

between

SHRI RAM AGYA, WORKMAN AND THE MANAGEMENT OF M/S PARAL CERAMICS WORKS
NAJABGARH ROAD, BAHADURGARH (ROHTAK)

Shri S.S. Gupta A.R. for the workman.

Shri M.M. Kaushal, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause(c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Ram Agya and the management of M/s Paral Ceramics Works Najabgarh Road, Bahadurgarh (Rohtak), to this Court for adjudication,— *vide* Haryana Government Gazette Notification No. 25454—59, dated 13th June, 1985:—

Whether the termination of services of Shri Ram Agya is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was serving with the respondent as a Handleman for the last about eight years on monthly wages of 385 and that because of urgent domestic work he went to his village, where, he fell ill and sent a medical certificate to the respondent alongwith the application of leave upto 3rd December, 1984 and when he turned up before the respondent on 3rd December, 1984 alongwith the fitness certificate, he was put off and was asked to come on 5th December, 1984, on which date, he was told that his name has been struck off from the roll of workman. So, it is alleged that his termination was illegal and unlawful and has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the petitioner joined the respondent on 1st March, 1984 as an unskilled worker and worked upto 25th November, 1984 and thereafter absented from his duties, regarding which, a notice was sent to him but to no avail and that as per Certified Standing orders applicable upon the respondent company his name was struck off from the rolls as he remained absent from his duties continuously for more than ten days and as such, abandoned his employment and so, the

present dispute is not referable to the Labour Court under section 2-A of the Industrial Disputes Act, 1947. So, it is alleged that the reference is bad in law, because the same could not have been made by the appropriate Government. On merits, most of the allegations made in the claim Statement have been denied. It is denied that the applicant proceeded on leave on 25th November, 1984. Receipt of any application or leave upto 3rd December, 1984 is also denied or submission of any fitness certificate on the said date. It is also denied that the petitioner was asked to report for duty on 5th December, 1984. So, it is alleged that since it was a case of dismissal for absenteeism, no notice was required to be given. Residuary please taken are that the petitioner remained gainfully employed after abandoning his employment and that the Claim Statement is not properly verified.

4. On the pleadings of the parties, the following issues were settled for decision on 25th October, 1985:

1. Whether the reference is bad in law ? OPR.
2. Whether the workman abandoned his employment of his own ? OPR.
3. Whether the Claim Statement has not been signed by duly authorised person ?
4. Whether the workman remained gainfully employed after his alleged termination ? OPR.
5. Whether the termination of services of Shri Ram Agya is justified and in order ? If not, to what relief is he entitled ?
5. The petitioner himself examined as WW-1 and the management examined Shri Harbhagwan as MW-1.
6. Heard.

Issue No. 1 / 2

7. The factum as to whether the petitioner abandoned his employment of his own or his services were terminated by the respondent can not be gone into by this Court in view of the law laid down in 1984 (II) LLN 297, *Sita Ram Vishnu, Shirodhikar/Administrator Govt. of Goa and others*. In that case also, the plea of the management was that the workman had abandoned his employment of his own and the terms of reference were confined to the justifiability or otherwise of the order of termination. Besides this authority of the Hon'ble High Court of Bombay there are two other authorities reported in 1985 Lab. I.C. 480, *Rajasthan State Road Transport Corporation/others versus The Judge Industrial Tribunal, Rajasthan Jaipur, and others* and 1981 Lab., I.C. 1110 between *Firestone Tyre & Rubber Co. o/ India (P) Ltd., versus The workman employed represented by Firestone Tyre employees Union*, wherein their Lordship have held that the Labour Court or the Tribunal cannot travel beyond the terms of reference except on matters which are incidental or ancillary to the main terms of reference. The factum of abandonment put forth by the respondent is absolutely alien or divorced from the terms of reference. Even then, I shall briefly touch upon the evidence adduced by the parties on this issue. In the demand notice received along with the order of reference or the Claim Statement filed by the workman in the Court, there is no plea that the workman had applied for leave on 25th November, 1984 when he went to his village and fell ill there. So, much, so, the workman has not mentioned even the date of his departure to his village. So, on merits also, it cannot be held that the workman had not abandoned his employment because he turned up on 3rd December, 1984 along with the medical certificate, but the plea of the management is that the workman absented from his duties after 26th November, 1984 and that as per the Standing Orders applicable to the respondent company duties after 26th November, 1984 and that as per the Standing Orders applicable to the respondent company absence for more than ten days without intimation or sanctioned leave leads to automatic abandonment of employment. So, issue No. 2 is answered against the workman. Issue No. 1 also has to be answered against him, because the present reference is bad in law in view of the law laid down in the authority cited above.

Issues No. 3 and 4

8. There is no evidence on behalf of the respondent on this issue. So, these issues were not rightly pressed on behalf of the respondent.

Issue No. 5

9. In view of my decision on issues No. 1 and 2 the question of justifiability or otherwise of the alleged order of termination cannot be gone into by this Court, because there was no order of termination as alleged by the petitioner. This plea of a abandonment was also taken by the respondent before the Labour-cum-Conciliation Officer. Furthermore, the management also sent registered notice to the petitioner dated 3rd December, 1984, copy of which is Ex. MW-1/1, —vide which, was he given notice of his absence from duty with effect from 26th November, 1984 but the workman did not turn up to resume his duties. This plea was also taken up by the respondent before the Conciliation Officer as is evident from the copy of the written comments filed before him by respondent. The same is Ex. MW-1/6.

10. In view of my aforesaid findings, there is no difficulty in holding that the present reference is bad in law and as such, the same is answered and returned accordingly with no order as to cost.

Dated 10th March, 1986.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 97-85/536, dated 4th April, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9786-6Lab./3342.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s Partap Talkies, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 113 of 85

between

SHRI DAYA SAGAR JAIN, WORKMAN AND THE MANAGEMENT OF M/S PARTAP TALKIES, ROHTAK

Shri R.S. Dhankar, A.R. for the workman.

Shri H.S. Vats, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Daya Sagar Jain and the management of M/s Partap Talkies, Rohtak, to this court, for adjudication,—*vide* Haryana Government Gazette Notification No. 32091-96, dated 30th July, 1985:—

Whether the termination of services of Shri Daya Sagar Jain, is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Booking Clerk since 1st June, 1966 and that on 3rd January, 1985 he was relieved of his Charge under order of the management and was asked to proceed to Delhi, at which, the petitioner went to Delhi as directed but failed to receive any satisfactory reply from the management regarding his posting. It is alleged that he was told that there is no work for him at Delhi but the workman received a letter dated 6th April, 1985 from the management asking him to report at Delhi office and the allegations of the management in the said letter that the workman was not interested in the job are palpably wrong. *Inter alia* it is alleged that his transfer order to Delhi was illegal and was a clever device to get rid of the petitioner and in this way the management terminated his services unlawfully and so, he was prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objection taken is that the reference is bad in law because the petitioner of his own abandoned his job. On merits, it is admitted that the petitioner was employed since 1st June, 1966. It is also admitted that the petitioner was transferred to Delhi but he never went there in compliance with the orders of the management or that he was told at Delhi that there was no work for him. It is further submitted that M/s. Universal Industries Ltd., 7-A, Rajpura Road is the proprietor of M/s. Partap Talkies, Rohtak and so, it is denied that the Partap Talkies, Rohtak has no business at Delhi.

4. On the pleadings of the parties, the following issues were settled for decision on 30th October, 1985 :—

1. Whether the reference is bad in law ? OPM.

2. Whether the termination of services of Shri Daya Sagar Jain is justified and if so, to what relief is he entitled .

5. The petitioner appeared as his own witness as W.W-1 and the management examined Shri Om Parkash Sharma, its Manager at Rohtak

6. Heard,

Issue No. 1:

7. The learned Authorised Representative of the respondent Shri Vats contended that a clear cut plea of the respondent is that the petitioner abandoned his employment of his own by not reporting for duty at Delhi office and as such, the present reference is bad in law. He based his contention in view of the law laid down in 1984 (II) LLN 297 Sita Ram Vishnu Shirodkar and Administrator Government of Goa and others. In the said authority it was held that the Labour Court or Tribunal cannot travel beyond the terms of reference except on matters which are incidental or ancillary to the main terms of reference. In the present case, the terms of reference are confined to the justifiability or otherwise of the alleged order of termination. The management has alleged that services of the petitioner were never terminated and that he of his own abandoned his employment. In this situation, this Court cannot go into the factum of alleged abandonment of employment by the petitioner unless there is proper reference by the Government in that behalf. The plea of abandonment is absolutely alien to the terms of reference and so, the Law laid down in the authority cited above applies with full force to the facts of the present case. In that behalf, a reference can also be made two other authorities reported in 1985 Lab. I.C. 480. Rajasthan State Road Transport Corporation and others v/s. The Judge Industrial Tribunal Rajasthan Jaipur and others and 1981 Lab. I.C. 1110 Firestone & Tyre Rubber Co. of India (P) Ltd. v/s. The Workmen employed represented by Firestone Tyre Employees Union. So, there is no difficulty in holding that since the question in controversy in the present case are absolutely beyond the terms of reference, this Court cannot go into the same and so, this reference is bad in law, and as such, this issue goes in favour of the management.

8. Since issue No. 1 has gone against the petitioner, the question of justifiability or otherwise of the alleged order of termination cannot be gone into, because the plea of the management is that no order of termination was passed by it and as such this reference is held to be bad in law and answered accordingly with no order as to cost.

Dated 14th March, 1986.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.

Endst. No. 113-85/535, dated 4th April, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL.

Presiding Officer
Labour Court, Rohtak,
Camp. Court. Bahadurgarh.

No. 9/7/86-6Lab./3344.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. United Steel & Allied Industries, M.I.E., Bahadurgarh :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 183 of 1983

between

WORKMAN AND THE MANAGEMENT OF M.S. UNITED STEEL AND ALLIED INDUSTRIES, M.I.E., BAHDURGARH

v. A.R. for the workman.

v. A.R. for the management.

AWARD

owers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Balak Singh and the management of M.S. United Steel and Allied Industries, M.I.E., Bahadurgarh, to this Court, for decision under Notification No. 57689-94, dated 31st October, 1983 :

of service of Shri Balak Singh for the workman? If so, what will be the

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Fitter for the last about eleven years on monthly wages of Rs. 475 and that on 2nd May, 1983 he applied for leave as his wife was indisposed but the management refused leave, and tried to force the petitioner to settle his accounts regarding which, a complaint was filed by him to the Labour Department on 3rd April, 1983 but to no avail and in this way the management unlawfully terminated his services in flagrant disregard of the provisions of section 25F of the Industrial Disputes Act, 1947.

3. In the reply filed by the respondent, preliminary objections taken are that the reference is bad in law, because services of the petitioner were never terminated by the respondent as alleged, because it was the petitioner who himself started absenting from his duties of his own. It is further alleged that during the conciliation proceedings, the petitioner did not appear before the Labour-cum-Conciliation Officer inspite of instructions in that behalf and so, it is alleged that the petitioner abandoned his employment of his own and as such, the present dispute is not referable to the Labour Court under section 2-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). On merits, it is alleged that when the petitioner started absenting from his duties of his own, registered notices dated 12th May, 1983 and 18th May, 1983 were sent to him to report for duty but the petitioner did not, but raised demand notice with the Labour-cum-Conciliation Officer on 16th May, 1983, which was replied to by the respondent and the Conciliation Officer fixed 21st May, 1983 and 28th May, 1983 as the dates for hearing but the petitioners did not turn up. It is further alleged that again on 29th May, 1983 a registered notice was sent to the petitioner to resume his duties but he did not. Residuary pleas taken are that the petitioner has remained gainfully employed after abandonment of his employment.

4. On the pleadings of the parties, the following issues were settled for decision by me on 1st October, 1984 :—

- (1) Whether the reference is bad in law ? OPR.
- (2) Whether the demand notice is pre-mature ? OPR.
- (3) Whether the claimant had abandoned his services by remaining absent from duty ? OPR.
- (4) Whether the claimant remained gainfully employed after he abandoned his services ?
- (5) Whether the termination of services of Shri Balak Ram, is justified and in order ? If not, to what relief is he entitled ?

5. The workman appeared as WW-1 and also examined WW-2 Shri Suraj Bhan, President, Hindustan National Glass Mazdoor Union, Bahadurgh. The management examined MW-1 Shri Arvind Bhasin, its partner, MW-2 Shri H.B. Chawla, Manager, E.S.I. Corporation and MW-3 Shri Raj Kumar, steno office of the Labour Officer, Rohtak.

6. Learned Authorised Representatives of the parties heard.

Issues No. 1, 2 & 3 :

7. These issues being taken nature have been, clubbed together for decision. The plea of the management is that services of the petitioner were never terminated as alleged on 2nd May, 1983, because the petitioner had applied for leave on the said date, which was declined but even then, the petitioner proceeded on leave and in that behalf two registered notices dated 12th May, 1983 and 18th May, 1983, copies of which are Exhibit M-4 and M-1 were sent to the workman to report for duty but the petitioner did not. It is further alleged by the management that on the demand notice raised by the workman, the management received notice from the Conciliation Officer on 16th May, 1983, to which, a reply was sent on 18th May, 1983. Two dates for conciliation proceedings 21st May, 1983 and 28th May, 1983 were fixed by the Conciliation Officer but the workman did not turn up and so, another notice dated 29th May, 1983, copy of which, is Exhibit M-3 was sent to the workman to report for duty but he did not. On these grounds it was alleged on behalf of the respondent that the workman abandoned his employment of his own and that no order of termination was passed against him. This plea was taken by the management even during conciliation proceedings, copy of which, is Exhibit MW-3/C. The reference made to this Court by the Labour Department, Government of Haryana is confined to the justifiability or otherwise of the alleged order of termination. Allthrough the case of the management has been that no order of termination was passed. Now, the question would be as to whether, this Court can go into the factum of abandonment put forth by the management or not stands clinched from the law laid down in 1984 (II) LLN 297 *Sita Ram Vishnu Shirodkar and Administrator Government of Goa and others*. On this point reference can be made to two other authorities reported in 1985 Lab. I.C. 480, Rajasthan State Road Transport Corporation and others versus The Judge Industrial Tribunal Rajasthan Jaipur and others, and 1981 Lab. I.C. 1110 between Firestone Tyre and Rubber Co. of India (P) Ltd. versus The workman employed represented by Firestone Tyre Employes Unions. In the Bombay High Court authority also, the plea of abandonment was taken by the management and the terms of reference were confined to the justifiability or otherwise of the order of termination. In that situation, their

Lordships held that since the plea of abandonment is absolutely alien to the actual controversy before the Court, the Labour Court cannot travel beyond the terms of reference. In view of these facts, it cannot be safely held that the present referee is bad in law, though the demand notice cannot be held to be pre-mature and no conclusive findings can be given on the factum of abandonment without a proper reference to this Court in that behalf.

Issue No. 4 :

8. There is not an iota of evidence on behalf of the management on this issue. So, the same is answered against the management.

Issue No. 5 :

9. In the light of my aforesaid findings, since there was no termination of services of the workman as alleged by the management and the factum of abandonment cannot be conclusively gone into by this Court, this reference is bad in law and is quashed accordingly with no order as to cost.

B.P. JINDAL,

Dated, the 11th March, 1986.

Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 183-83/537, dated the 4th April, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

No. 9/7/86-6Lab/3345.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of Haryana Roadways, Sirsa.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Ref. No. 277 of 83

between

**SHRI SUBE SINGH, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS,
SIRSA.**

Present:—

S.N. Vats, A.R. for the workman.

Shri V.K. Kohli, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Sube Singh and the management of Haryana Roadways, Sirsa, to this Court, for adjudication.—*vide* Haryana Govt. Gazette Notification No. 63904-8, dated 7th December, 1983:—

Whether the termination of services of Shri Sube Singh is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Conductor on permanent basis but the respondent chose to terminate his services unlawfully, *- vide* order dated 3rd February, 1981 after holding a force of an enquiry, in which he was not given adequate opportunity of participation and further more same was held in gross violation of the principles of natural justice and the Enquiry Officer was an officer of the management and as such, he could not have been impartial in his approach and so, the order of termination passed on the basis of the same is not legal and lawful. He has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, the claim of the workman has been controverted, though, it is admitted that his services were terminated on 3rd February, 1981 after holding a proper and valid domestic enquiry, in which, the petitioner was given full opportunity of participation. Additional plea taken is that the claim has not been properly verified.

4. On the pleadings of the parties, the following issues were settled for decision on 5th October, 1984:—

1. Whether a valid and proper domestic enquiry was held by the respondent ?

2. Whether the termination of services of Shri Sube Singh is justified and in order? If not, to what relief is he entitled ?

5. The management examined MW-1 Shri Sant Kumar Joshi, the then General Manager, Haryana Roadways, Sirsa, MW-2 Shri J.N. Goel, Accounts Officer, who held the enquiry, MW-3 Shri Ram Parkash Inspector, MW-4 Shri Chuni Ram, MW-5 Shri Randhir Singh, Adda Conductor and MW-6 Shri Surjeet Singh. The workman appeared as his own witness as WW-1.

6. Heard.

Issue No. 1

7. To prove this issue, the management examined Shri S.K. Joshi, the then General Manager, Haryana Roadways, Sirsa Depot as MW-1. He stated that on receipt of complaints Ex. M-1 to M-5 his predecessor Shri M.L. Verma passed an order for the issuance of charge-sheet Ex. M-6 to the petitioner and thereafter Shri J.N. Goel, Assistant Accounts Officer was appointed as Enquiry Officer,—*vide* order Ex. M-8 and after receipt of the enquiry report he ordered for the issuance of final show cause notice to the petitioner, to which, a reply Ex. M-10 was filed and thereafter the workman was given a opportunity of personal hearing and the order of termination was passed. MW-2 is Shri J.N. Goel, who held the enquiry against the petitioner. The enquiry proceedings are Ex. M-2 and that during the enquiry proceedings, he recorded the statement of Shri Umed Singh, Randhir Singh, Chuni Lal, Ram Parkash and Surjeet Singh and the petitioner was given full opportunity of cross examination and thereafter he was given an opportunity to produce his defence, which, the petitioner did not avail of. MW-3 is Shri Ram Parkash, Inspector, who stated about the checking of the bus done by him on 9th October, 1979. The petitioner was Adda Conductor at Sirsa Depot and the petitioner had charged from two passengers Rs. 19 each as fare from Sirsa to Delhi though, the actual fare was Rs. 17.80. MW-4 is Shri Chuni Lal, Chief Inspector, who stated that on 22nd September, 1979 checking of the bus number 5377 was done by him and the petitioner was conductor on the said bus. He found two passengers travelling without tickets from Agroha to Kharkheri. MW-5 Shri Randhir Singh is Adda Conductor, who stated that on 22nd September, 1979 he checked bus number 5377 near Sampla and found one passenger travelling from Delhi to Hansi from whom the petitioner had charged Rs. 9 as bus fare but the tickets issued were Rs. 7.80. MW-6 Shri Surjeet Singh, Adda Conductor, who stated that on 19th November, 1979, he checked bus number 5394 near village Banwala. On that date the petitioner was working as Adda Conductor at Sirsa Depot and one passenger was found travelling from Sirsa to Muktsar holding a ticket which was short by Rs. 1.75 from the actual fare of Rs. 7.75.

8. In reply, the petitioner appeared as WW-1 and made a sweeping statement that no charge-sheet was issued to him, nor any enquiry was held. Again stated that enquiry was held by the Accounts Officer but he was called to join the enquiry proceedings from his duty hours and that the witnesses of the management were examined by the Enquiry Officer by leading them in examination and that questions were put to him by the Enquiry Officer and that he was not given any opportunity of producing his defence.

9. The learned Authorised Representative of the workman Shri S.N Vats contended that the enquiry held in this case was not fair and proper, because the workman was not given any copies of the complaints and was not given full opportunity of cross examining the witnesses of the management. His contentions are beyond the record. The entire enquiry proceedings file has been placed on record by the management. A perusal of the same goes to show that opportunity was given to cross examining the witnesses of the management but he did not avail of the same. He was also given opportunity to produce his defence, which too, was not produced by him, otherwise the enquiry proceedings are signed by the petitioner. Copy of the chargesheet is on the file and so the reply filed by the petitioner. If, no chargesheet was issued to him as stated by the petitioner in examination-in-chief, there was no question of his filing a detailed reply of the same. Copy of the same is Ex. M-10. So, in my opinion, the Enquiry Officer did not commit any procedural irregularity in conducting the enquiry proceedings. The same was held within four corners of the principles of natural justice, because full opportunity was given to the petitioner, to cross examining the witnesses of the management and also to produce his defence which incidentally was not availed of by the petitioner. The enquiry report in this case is also detailed one and the Enquiry Officer has appraised the evidence thoroughly before arriving at adverse findings. Under these circumstances, there is no difficulty in holding that the enquiry conducted in this case was fair and proper and as such, this issue goes in favour of the respondent.

Issue No. 2

10. Now, the question would be as to whether any inference by this Court under section 11-A of the Industrial Disputes Act, 1947 is called for. He was sacked on 3rd February, 1981. As per the allegations in the demand notice his service period with the respondent was for about 4½ years. So, the petitioner was employed with the respondent some where in the year 1977. He started misusing at the funds of the respondent in the year 1977. Not only that he started over charging fare from the journey passengers and pocketing the excess amount charged. In a recent authority of the Hon'ble High Court of Punjab and Haryana, it has been held that the conductors of the State Transport should not be reinstated when they are proved to be guilty of misappropriation of funds. The said authority was reported in 984(3) SIR 514 *State of Punjab v/s Surat Singh and another*. While passing these observations his lordship of Punjab and Haryana High Court relied upon a Full Bench authority of the Gujarat High Court reported in 1983 Lab-I.C. 1349 *between Gujarat Road Transport Corporation Ahmedabad v/s Jamma Das Bichurbhai*. The Hon'ble High Court of Punjab and Haryana, directed the Labour Court to explore alternative avenues of employment for such defaulting conductors. I made enquiries from the learned Law Officer of the respondent and he was categorically in his reply that no alternative avenue of employment exist in the roadways at the moment. So, the order of termination cannot be set aside and the petitioner is not entitled to any relief. The reference is answered and returned accordingly with no order as to cost.

Dated 12th March, 1986

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak

Endst. No. 277-83-538, dated 4th April, 1986.

Forwarded (four copies) to the Secretary to Govt., Haryana Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,
Labour Court, Rohtak.

The 21st May, 1986

No. 97 86-6 Lab. 3832. In pursuance of the Provisions of Section 7 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) to Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of (i) Transport Commissioner, Haryana, Chandigarh (ii) Haryana Roadways, Bhiwani.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 58 of 85

between

SHRI HARI SINGH, WORKMAN AND THE MANAGEMENT OF (i) TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH, (ii) HARYANA ROADWAYS BHIWANI

Present

Shri S.N. Vats, A.R. for the workman.

Shri Vijay Vir Singh, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Hari Singh and the management of (i) Transport Commissioner, Haryana, Chandigarh, (ii) Haryana Roadways, Bhiwani to this Court for adjudication *vide* Haryana Government Gazette Notification No. 15726-32, dated 15th April, 1985.

Whether the termination of services of Shri Hari Singh is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Conductor since 1974 and that his services were terminated by the respondent unlawfully *vide* order dated 28th September, 1982 after holding a force of an enquiry, in which, he was not given an opportunity of complete participation. He was not given copy

of the complaint on the basis of which, charge-sheet was issued. No prior notice regarding holding of an enquiry was given to him by the Enquiry Officer, who was biased in favour of the management, being its employee and so, he has challenged his termination being illegal and unlawful and has claimed reinstatement with benefits of all previous service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the management has since lost confidence in the workman, who has no case, because the order of termination is lawful and legal and the same was passed after holding a fair and proper domestic enquiry and that the present reference is not maintainable. Reply on merits, runs on the same lines and as such, I need not suffer repetition.

4. On the pleadings of the parties, the following issues were settled for decision by me on 25th July, 1985 :—

- (1) Whether the management has lost confidence in the workman ? OPR.
- (2) Whether a valid and proper domestic enquiry was held by the management before terminating the services of the workman ? OPR.
- (3) Whether the termination of services of hri Hari Singh is justified and in order ? If not, to what relief is he entitled ?

5. I further directed,—*vide* order of the said date that the issue No. 2 regarding domestic enquiry shall be tried as preliminary issue. During the course of arguments, the learned Authorised Representative of the respondent agreed that, in case, issue regarding domestic enquiry is answered in favour of the management, the management will not adduce any evidence on the remaining issues.

6. The management examined MW-1 Shri R.L. Kohli, Accounts Officer, who conducted the enquiry against the petitioner, MW-2 Shri J. S. Yadav, MW-3 Shri Mohinder Kumar and MW-4 Shri I.D. Kaushik, all the three are posted as S.D.M. Hansi, Jind and Karnal respectively. The workman appeared as his own witness as WW-1.

7. Learned Authorised Representatives of the parties heard.

Issue No. 2

8. To prove this issue, the management examined MW-1 Shri R.L. Kohli, Accounts Officer, who stated that he was appointed Enquiry Officer in this case,—*vide* order Ex. M-1. Copy of the charge-sheet is Ex. M-2 and that he issued notices to the parties, copy of which is Ex. M-3 and thereafter recorded the statement of the Inspector in the presence of the workman, who was afforded full opportunity of cross/examination and on the same date he recorded the statement of the petitioner, copies of the proceedings are Ex. M-4. Ex-5 is the enquiry report. The workman produced two witnesses and the copies of their statements are Ex.-M-6 to M-7 and that the workman fully participated in the enquiry proceedings. MW-2 Shri J.S. Yadav stated that on 12th October, 1981 a bus of the roadways was checked coming from Mohindergarh to Bhiwani and the petitioner was conductor on the same and a sum of Rs. 124.65 was found excess at the time of checking cash with the petitioner and on this report he issued charge-sheet Ex. MW-2/1. Reply furnished by the petitioner was found unsatisfactory and thereafter the appointed Assistant Accounts Officer for holding an enquiry, who submitted his report on 14th May, 1982 and thereafter he was transferred. MW-3 Shri Mohinder Kumar, who stated that he remained as General Manager, Bhiwani Depot from 18th June, 1982 to August 1982 and that during his tenure enquiry file was put up before him and after going through the file and the enquiry report he ordered for the issuance of final show cause notice to the petitioner alongwith the history sheet of previous record. MW-4 Shri I.D. Kaushik, who remained posted as General Manager, Haryana Roadways, Bhiwani from August 1982 to May 1984 and that on 8th September, 1982 he passed an order for affording an opportunity of personal hearing to the petitioner and that thereafter he passed an order of termination Ex. MW-4/3.

9. The petitioner appeared as WW-1 and stated that he was appointed as Conductor in the Haryana Roadways Bhiwani in the month of October, 1975 and that his services were terminated on 28th September, 1982. A charge-sheet was issued to him and that there are no departmental instructions that no personal cash can be kept by the conductor while on duty that when the checking of the bus was done, no passenger was found without ticket and that he had been given Rs. 50 by some relative for the purchase of certain goods and that a sum of Rs. 96.30 were with him, which, he was to return to a passenger.

10. The learned Authorised Representative of the respondent Shri Singh rightly contended that the Enquiry Officer followed the principles of natural justice while holding enquiry proceedings, because the statement of the Inspector was recorded in the presence of the petitioner, who was afforded full opportunity of cross examination. Further more, the petitioner not only participated in the enquiry proceedings but he also adduced evidence in defence, which was duly discussed by the Enquiry Officer in his report and was also relied upon by him while giving his findings. So, no umbrage can be taken against the procedure adopted by the Enquiry Officer and as such, the enquiry cannot be said to be illegal and unfair. Under these circumstances, the learned Authorised Representative of the workman was very lukewarm in pressing this issue against the respondent. So, this issue goes in favour of the management.

Issue No. 1 and 3

(1) I have already held while disposing of issue No. 2 that the enquiry conducted in this case was fair and proper. Now, the question would be as to whether the petitioner is guilty of any misconduct or not. He was proceeded against on the basis of checking of the bus done by Shri Dharmbir Inspector on 12th October, 1981 when the bus was proceeding from Mohindergarh to Bhiwani and the petitioner was conductor of the same. A sum of Rs. 124.65 was found in excess. Incidentally no passenger was travelling without ticket. This is not denied by the respondent roadways. During the course of enquiry proceedings the petitioner adduced defence evidence to prove that out of this amount a sum of Rs. 96.30 he forgot to return to a passenger and that a sum of Rs. 30.00 was given to him in a relation for the purchase of goods. The Enquiry Officer believed the defence version to the extent of Rs. 96.30 which amount some passenger failed to collect from the petitioner. So, the Enquiry Officer returned a finding that a sum of Rs. 28.35 were found in excess. It was orally submitted by Shri Singh Authorised Representative of the respondent that there are instructions that no Conductor on duty can retain any cash for personal use except after making an endorsement in that behalf on the way bill and that in the present case, there was no endorsement on the way bill that the petitioner was holding any cash for personal use and so, the only inference would be that the petitioner had collected the cash amount from certain passengers without issuing them any tickets and in this way it was a case of embezzlement of Government money. This contention is based upon conjectures and surmises. Inspite of oral submission made by Shri Singh Authorised Representative of the respondent, no such instructions have been placed on record by the respondent nowadays for the perusal of the Court. Even if, it be believed that any such instructions had been issued to the Conductors, the question would be as to who are the authors of the instructions and under what authority those were issued by the concerned officers. Incidentally the case of the petitioner was handled by three senior officers of the Haryana Civil Services (Executive Branch). Shri J. S. Yadav was the first officer who ordered for the issuance of Charge-sheet to the petitioner and appointed Enquiry Officer. Shri Mahender Kumar was the second officer, who ordered for the issuance of final show cause notice to the petitioner after receipt of the enquiry reports. Shri L. D. Kaushak came into picture after transfer of Shri Mahender Kumar and he ordered that an opportunity of personal hearing should be given to the petitioner and after giving the same, he passed an order of termination. In my opinion, the capital punishment of termination was awarded to the petitioner without application of any mind. Shri J.S. Yadav was examined as M.W. 1, who stated that the petitioner was not guilty of any embezzlement of Government money. If the petitioner was not guilty of misappropriation of Government money, how is it that Shri J. S. Yadav ordered for issuance of chargesheet. On the basis of cryptic report made by Shri Dharamvir, Inspector, who even did not follow the elementary procedure of counting the cash in relation to the tickets issued by the petitioner. The present case is glaring example where the executive authorities have acted in a very arbitrary and illegal manner, for punishing a man for no fault of his own and for infractions of some executive instructions, which inspite of best efforts made by this Court, have not brought on record. Had any of these officers applied their mind at any stage, the petitioner would have been spared from the agony of forced unemployment, which, he has suffered for the last more than 3-4 years. In passing the order of termination not only the petitioner has suffered, his family must have suffered more so in case, the petitioner was a sole bread earner of the family. Under these circumstances, this Court is constrained to observe that the order of termination passed against the petitioner was absolutely un-called for and so, exercise powers under section 11-A of the said Act, the petitioner is ordered to be reinstated with continuity of service and full back wages.

Dated the 10th April, 1986

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh

Endst. No. 58 & 590, dated the 21st April, 1986

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Dispute Act, 1947.

B. P. JINDAL,

Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bahadurgarh.